

# CHAPTER 1

## UNDERSTANDING THE CDBG CONTRACT

**NOTE:** References are made to “the grantee,” “you,” or “your” in this chapter. All references to “you” or “your” mean the same as “the grantee.”

### I. INTRODUCTION.

The purpose of this chapter is to provide a description of the CDBG contract requirements. The grantee should refer to its own contract for the complete language and conditions applicable to its grant. Detail on federal overlay requirements (i.e., environmental, equal opportunity, labor standards and relocation) are provided in subsequent chapters. There are also separate chapters for housing rehabilitation and economic development activities.

*Sections of text printed in Italic typeface refer only to Planning and Technical Assistance (P/TA) grants.*

### II. GRANTEE RESPONSIBILITIES.

The contract explains what the grantee agrees to do in exchange for receiving the grant. The grantee must comply with all of the requirements applicable to its contract activities. Some requirements must be fulfilled prior to incurring project costs, and/or prior to the Department's disbursement of funds. If at any time the grantee has questions about contract obligations, do not hesitate to contact a CDBG representative (see list in Appendix C).

This section covers the contract language in the same order as the contract. The contract uses the term "State" instead of Department but these two words have the same meaning except where “State” may include the Controller's Office or Bureau of State Audits.

#### Body of Contract

Introduction. The introductory clause cites the federal law and federal and State regulations governing the CDBG program. The grantee must comply with the statute and regulations and the terms of the contract, including completing the activities identified in the grantee's application to meet the specified national objective. The contract subsequently refers to the local jurisdiction as the "Grantee." The original funded CDBG application is incorporated by reference, so any change from the application requires prior written approval from the Department.

Term. The starting and ending dates of the contract are listed here. All grant activity must be completed by the ending date of the contract.

Funding Year & Type of Grant. This identifies the fiscal year and funding allocation for the specific grant.

Grant Amount. The total dollar amount of the grant is identified. The grantee will receive only that portion of the grant for which it documents eligible expenditures. Any disbursed but unused grant funds must be returned to the Department. (See Chapter 9 for details of requesting cash disbursements.)

Grant Activity. The work to be done with CDBG funds is summarized here, described briefly in Attachment C of the contract, and explained more fully in the grantee's application, which is included by reference.

Standard State terms. These sections set forth the basic requirements of all State contracts.

1. The grantee cannot hold the State responsible for any of the grantee's losses or damages in performing the contract.
2. The grantee must be, and maintain its status, as an eligible local government entity or organization. The grantee is not operating as an agent of the State.
3. The State may terminate this contract if the grantee fails to perform the requirements of the contract.
4. The grantee may not assign its work under this contract to another party without written consent of the State. This provision does not prohibit the grantee from subcontracting with a local program administrator.
5. The grantee must perform the work in a timely manner. A CDBG contract may be from a few to 30 months for planning grants and up to 30 months for General Allocation, Native American, Colonias and Economic Development grants.
6. The contract cannot be amended except in writing. Verbal agreements are not binding.
7. The funds are provided in compensation for actual work performed under the terms of the contract.
8. Approved Application. The grantee agrees to do the work proposed in its CDBG application. Changes to the application approved in writing by the Department prior to the award are incorporated as part of the "approved application."

9. Commencement and Completion of Grant Activity.

- a. The grantee may not begin work or incur any costs to be paid with CDBG funds, or obligate any CDBG funds before the contract effective date (the date stamped in the bottom right-hand corner of the first page) and until the grantee has met all applicable contract conditions.
- b. The grantee must complete all grant activities except submittal of close-out paperwork (see Chapter 13) by the contract termination date. The grantee must request any time extension in writing at least 90 days prior to contract termination, and any extensions must be approved in writing by the Department.

10. Grant Termination.

- a. If the grantee violates the contract terms or conditions, HUD requests termination, or the Department loses spending authority, the Department may terminate the contract, either in whole or in part, after giving at least fourteen (14) days written notice. If the contract is terminated, the grantee must return any unexpended grant funds received to the Department within fourteen (14) days of the notice of termination. (See Chapter 13 for instructions on returning unused funds.)
- b. The grantee acknowledges that the contract may have been prepared prior to the federal appropriation of CDBG funds so is subject to the funds being made available. The Department may prepare the contracts in advance of the appropriation to avoid delays in program activity.
- c. If federal funds are not made available for the federal fiscal year under which the grant was awarded, the contract becomes invalid and unenforceable. The contract is also subject to any other federal or State legislation or actions which may restrict the terms or funding thereof.
- d. If less federal dollars are appropriated than were anticipated when the Department announced awards, the contract may be amended to reflect the reduction or may be terminated.

11. Grant Amount. The Department will pay the grant amount on page 1 for the work the grantee has agreed to perform. The Department will not pay for any costs outside of the contracted scope of work, or for any excess, unauthorized, or ineligible costs. The grantee must abide by the program regulations.

12. Leverage/Matching Funds/Program Income. The grantee has committed the amounts of leverage and/or matching funds and/or program income specified in Attachment C of your contract. If the grantee encounters problems in meeting these obligations, contact a CDBG representative to discuss possible solutions.
13. Method of Payment.
- a. Advances and Reimbursements. The grantee must submit the required cash request form in order to receive an advance or reimbursement for expenditures against the grant. All CDBG-funded work must be completed in compliance with the contract and all applicable laws and regulations. (See Chapter 9 for detail on requesting grant funds.)
- If the grant is for a Housing Rehabilitation activity, the grantee may choose to receive all of the activity funds in a lump sum draw. Certain conditions apply to this type of draw; contact a CDBG representative for further direction. See Chapters 9, 10, and 16 for more information on cash requests, reporting, and use of the lump sum draw process.
- b. Final Payment Requests. The grantee may request an advance no later than the end of the 27th month of a 30-month contract (*or 90 days prior to grant expiration for a P/TA grant*). The final request for reimbursement must be received no later than 45 days after the contract expiration date. If the grantee does not request the funds by this 45<sup>th</sup> day, the State will disencumber any funds that may remain in the standard agreement and those funds will no longer be available. (See Chapter 9 on cash requests and Chapter 13 on grant close-outs.)
14. Meeting National Objectives. Approved CDBG activity(ies) must meet the national objective(s) specified in the grantee's application and contract. The grantee will report on progress and be monitored by the Department for compliance.
15. Special Conditions. The grantee agrees to comply with all applicable special conditions identified in Attachment D of the contract. At a minimum these include demonstrating compliance with or exemption from environmental review and relocation requirements. (See discussion later in this chapter regarding Attachment D, and proceed to subsequent chapters for detail, as applicable to your contract.)

*If the grantee has a P/TA contract, there is no Attachment D. Special conditions, if any, will be listed in Attachment C.*

16. Inspections of Grant Activity.

- a. The grantee is responsible for inspecting the work performed under this contract to ensure it complies with this contract and with all applicable federal, State and local requirements such as environmental, building, planning, health and safety, and historic preservation.
- b. To ensure compliance, the Department or other State agency may inspect the work performed.
- c. The grantee must correct or require its contractor(s) to correct all work found out of compliance by such inspections and not pay the contractors or subcontractors until the work is corrected.

17. Insurance. The grantee agrees to have in effect throughout the contract term the types of insurance deemed necessary by the grantee and the Department for the amount and type of work described in Attachment C of the contract.

18. Contractors and Subcontractors.

- a. Before the grantee enters into any contract, it must confirm that the contractor is licensed in good standing in the State of California, and is not listed on the federal Consolidated List of Debarred, Suspended, and Ineligible Contractors. (See Chapter 5 for further information.)
- b. The grantee's agreement with any contractor must require the contractor and any subcontractors to:
  - 1) Perform the work in accordance with all applicable federal, State and local housing and building codes, such as environmental, building, planning, zoning, health and safety, relocation, labor, fair employment, and historic preservation;
  - 2) Comply with all federal and State overlay requirements described in Attachments A and B of the contract, including labor standards and equal opportunity requirements;
  - 3) Where applicable, maintain at least the minimum State-required worker's compensation insurance for those employees who will perform all or any part of the CDBG-funded work;
  - 4) Maintain, if legally required, unemployment insurance, disability insurance and liability insurance reasonable to compensate for injuries or damages related to the activities of this contract;

- 5) Keep all program records for at least three years after the contract and any and all amendments expire or three years after the completion and resolution of any audits or lawsuits, whichever is later;
  - 6) Allow the Department, HUD or other State or federal agencies to access all relevant records for grant monitoring or auditing purposes. (See Chapter 7 for recommendations on how to organize program records, and Chapters 11 and 12 for detail on audits and monitoring.)
19. Obligations of Grantee with Respect to Certain Third Party Relationships. Regardless of whether the grantee designates another party or contracts out any work under this contract, the grantee is still responsible for performing the work, meeting all conditions of the contract, and ensuring the program is carried out in accordance with all the State and federal requirements the grantee assured or certified to in its application.
20. Signs. If the grantee places a sign on the project property (such as for a community center, public works project, new housing complex) indicating the funding sources, list the State CDBG program in a size and typeface proportional to its share of project funding. Signs may or may not be placed on projects for individual homes or businesses assisted with CDBG funds depending on the local policy and the preference of the individuals assisted.
21. Audit/Retention and Inspection of Records.
  - a. The grantee must have intact, auditable fiscal records at all times. If there is a missing audit or audit(s) during the term of the contract, the grantee must submit for State review and approval a plan for submitting the audit(s). If the grantee subsequently fails to meet the deadlines established in the plan, the Department may terminate the contract. (See Chapter 7 for guidance on accounting and recordkeeping.)
  - b. The grantee must keep all books and records pertaining to the contract for at least four years from the date the grantee submitted its final expenditure report (Closeout Financial and Accomplishment Report) or four years after the completion and resolution of all audits and any litigation, if later. Accounting and recordkeeping requirements and recommendations are detailed in Chapter 7 of this Manual. The grantee must allow access to the books and records by the State, Department, federal government and Bureau of State Audits or their representatives with or without prior notice.

- c. Any disallowed expenditures, such as those found to be for ineligible uses or without adequate documentation, must be reimbursed to the State pursuant to Department instructions (see Chapter 13). Expenditures for activities not specifically described in Attachment C of the contract are considered authorized only if the grantee obtained written approval of the activities from the Department prior to commencement.
- d. The State makes the final decision about allowable expenditures. Unless the grantee finds the State has made a mistake or committed fraud, the grantee cannot appeal the State's determination of allowable expenditures.
- e. In accordance with the Office of Management and Budget (OMB) Circular A-133, the grantee must perform an annual audit at the close of each fiscal year during the term of the contract. The grantee may charge the CDBG-related portion of the audit to the general administration portion of the CDBG grant. To be eligible for payment under this grant, all audit costs must be incurred before the contract expires.
- f. The audit must be performed by a qualified independent, State or local auditor. The grantee's contract with the auditor must include a clause permitting the State access to the auditor's working papers.
- g. If the grantee has any audit findings, the grantee must write to the State responding to each finding. The State will review the response, and if it finds it acceptable the audit ends and the State will notify the grantee of this in writing. If, however, the responses are not acceptable, the State will advise the grantee in writing what corrective actions must be taken.
- h. The Department will not approve any audit expenditures until receiving the grantee's audit approved by the State Controller's Office.
- i. If the Department so requests, the grantee must deliver all records and other program materials to the State as depository.

(See Chapter 11 for more detail on fulfilling audit requirements.)

- 22. State Coordinator. Unless otherwise directed by the Department, send reports and other correspondence regarding the contract to the CDBG Program Manager or his or her designee at the Department of Housing and Community Development, Division of Community Affairs, P.O. Box 952054, MS 390-2, Sacramento, CA 94252-2054.

23. Conflict of Interest of Members, Officers, or Employees of Contractors, Members of Local Governing Body, or other Public Officials. None of the grantee's officers, members or employees, designees or agents (e.g., subrecipients, consultants), governing board members (e.g., City Council, Board of Supervisors), or other public officials with duties involving the grant activities may have any interest in any contracts or proceeds for the work done in conjunction with this contract. The grantee must include a similar conflict of interest clause in all contracts and subcontracts for the work.
24. Waivers. All provisions of the contract remain in effect and are enforceable unless the Department specifically waives them in writing. Waiver of one provision does not waive other provisions.
25. Litigation
- a. If a provision of the contract is held to be legally invalid by a court of competent jurisdiction, this invalidity does not affect other provisions of the contract.
  - b. The grantee must notify the Department immediately of any legal claims or actions by the grantee or against the grantee which may affect the contract or the Department. The grantee is to act consistently with the terms of the contract and in the interests of the State.
26. Certified Resolution. The grantee must have filed, with your application or contract, a certified resolution from the governing body authorizing execution of the contract and any amendments thereto.
27. Compliance with State and Federal Laws and Regulations.
- a. The grantee agrees to comply with all State requirements applicable to the grantee and its contractors per Attachment A of the contract.
  - b. The grantee agrees to comply with all federal laws and regulations applicable to CDBG and the funded activity(ies), including the requirements in Attachment B of the contract.



## **Attachment A: Compliance Requirements - State Law and Regulations**

1. Drug-free Workplace Certification. The grantee certifies, when signing the contract, that it complies with the Drug-Free Workplace Act of 1990 (Government Code Sections 8350 et seq.) and will take the following actions:
  - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
  - b. Establishing an ongoing drug-free awareness program to inform employees about -
    - 1) The dangers of drug abuse in the workplace;
    - 2) The grantee's policy of maintaining a drug-free workplace;
    - 3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - 4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
  - c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1.
  - d. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will.
    - 1) Abide by the terms of the statement; and
    - 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
  - e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d. (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

- f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted.
  - 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a, b, c, d, e and f.

If the grantee fails to comply with these requirements the Department may suspend grant payments or terminate the contract, or both. If the Department finds the grantee has made a false certification or failed to carry out these requirements, the grantee may also be ineligible for future State awards.

2. Nondiscrimination Clause.

- a. The grantee, its contractors and subcontractors may not unlawfully discriminate against employees or job applicants for any of the reasons listed, and must insure that the employees and applicants are treated and evaluated free from discrimination or harassment. The Fair Employment and Housing Act and regulations are incorporated into your contract by reference and the grantee must comply with them. Contractors and subcontractors must also give written notice of their obligations to any labor organizations they have agreements with.
- b. The grantee and its contractors and subcontractors must include the nondiscrimination and compliance clause (2.a above) in all of the contracts and subcontracts for work under this CDBG contract. (See Chapter 4 for further information on complying with nondiscrimination and equal opportunity requirements.)

## **Attachment B: Compliance Requirements - Federal Laws and Regulations**

Except for minor exceptions in Planning and Technical Assistance grants, the following federal requirements will be included in the contract.

1. Anti-Lobbying Certification. You must include in all contracts and subcontracts for the work under this contract the certification language given in this clause beginning with "The undersigned certifies . . . ." The certification assures that no federal funds are used to influence members of Congress, and that if any non-federal funds are used to lobby Congressional members or staff, the certifier will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" (see Section VI). Failure to file the certification may result in a fine.
2. Bonus or Commission, Prohibition Against Payments of. Your grant monies may not be used to pay bonuses or commissions to try to obtain application approval or other approvals required under your contract or by program statutes and regulations.

This does not prohibit the use of program funds for legitimate technical assistance, consulting or management services provided they are eligible program costs.

3. Citizen Participation. You must follow State and federal program regulations pertaining to Citizen Participation. You must:
  - Provide for and encourage citizen participation in your CDBG program.
  - Conduct public hearings to inform the public of your proposed and actual use of CDBG funds, obtain citizens' views, and respond to proposals and questions.
  - Provide an address, phone number, and times for submitting complaints and grievances about the program, and respond in writing to written complaints and grievances within 15 working days, whenever possible;
  - Maintain a public information file to provide the written program information (see Chapter 7 for outline of basic contents of the file). Public hearing notices should inform citizens of the location of the public information file.

See Chapter 18 for additional information about the Citizen Participation Requirements and a sample Public Notice.

4. Clean Air and Water Acts. Your activities under this grant are subject to the requirements of both the Clean Air Act and Water Pollution Control Act, and the applicable regulations.

5. Conflict of Interest of Certain Federal Officials. No Congressional representative and no resident commissioner shall receive any benefit from this grant agreement or activity.
6. Environmental Requirements. You must act as the "lead agency" in reviewing your "project" (i.e., any single CDBG activity except general program administration) for compliance with the National Environmental Policy Act (NEPA.) The first step is to determine your project's "level of clearance finding" and thus what level of review is needed and if the project is exempt or excluded from NEPA. (Refer to Chapter 3 for detail on how to make this determination and complete the necessary level of environmental review pursuant to federal regulations.)
7. Equal Opportunity. You must comply with the various laws and requirements listed, as follows:
  - a. The Civil Rights, Housing and Community Development, and Age Discrimination Acts Assurances:

In accordance with the federal statutes and regulations, you may not discriminate or exclude from employment or program participation any person due to race, color, national origin, sex, age, handicap, religion, familial status or religious preference.
  - b. Rehabilitation Act of 1973 and the "504 Coordinator":

You agree to implement the Rehabilitation Act of 1973, as amended, and its regulations. This involves evaluating the jurisdiction's current policies and practices, and modifications made to ensure compliance with Section 504. If you have 15 or more employees, you must designate a person as the "504 Coordinator" (see Chapter 4).
  - c. The Training, Employment, and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance:

This compliance section is commonly known as "Section 3." Section 3 requirements are applicable to you, the grantee, if your grant exceeds \$200,000, and is used for housing rehabilitation, housing construction, or other public construction activities. Section 3 is also applicable to your contractors and subcontractors performing work on Section 3 covered projects when your CDBG grant exceeds \$200,000 and their contract or subcontract amount exceeds \$100,000. Section 3 does not apply to contracts for the purchase of supplies and materials only (no installation). Your contract specifies that:

- 1) You agree to comply with "Section 3" which requires that you provide, as much as possible, opportunities for training and employment to lower income residents of your CDBG project area, and contracts to businesses in or principally owned by persons living in the project area.
- 2) You agree that you have no other contractual or other concern that prevents your compliance with the Section 3 requirements.
- 3) You must include the text of this section (c) in all of your contracts and subcontracts for the project. You cannot approve any contract until the contractor or subcontractor has provided you with a written statement of its ability to comply with these requirements.
- 4) Your compliance with Section 3 requirements is a condition of receiving this federal funding, and non-compliance will subject you to sanctions.

d. Americans with Disabilities Act (ADA) of 1990:

You assure that you comply with the ADA and applicable regulations and guidelines thereof which prohibit discrimination on the basis of disability in employment, state and local government service, and in public accommodations and commercial facilities.

e. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or more:

You agree to place in every construction contract and subcontract over \$10,000 the specified language regarding:

- Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246);
- Standard Equal Employment Opportunity Construction Contract Specifications; and
- Goals and Timetables from U.S. Department of Labor.

(Refer to Chapter 4 for detail on equal opportunity requirements and the complete text of the required contract clauses described above.)

8. Flood Disaster Protection. The Flood Disaster Protection Act, Section 202(a) prohibits federal financial assistance for buildings located in Special Flood Hazard Areas (SFHAs) within communities not participating in the National Flood Insurance Program. Section 102(a) mandates the purchase of flood insurance for buildings located in SFHAs as a condition of approval for federal financial assistance. Flood insurance protection is mandatory for acquisition, construction, reconstruction, repair and improvement activities. However, flood insurance is not required for routine maintenance activities. *(This paragraph is not included in P/TA contracts.)*
9. Labor Standards - Federal Labor Standards Provisions. You must abide by and include in full in all contracts subject to these provisions, provisions regarding the Davis-Bacon Act, Copeland "Anti-Kickback" Act, Contract Work Hours and Safety Standards Act, and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3, and 5. (Refer to Chapter 5 for information on which provisions, if any, apply to your activities, and for the text of any required contract clauses.) *(This paragraph is not included in P/TA contracts.)*
10. Lead-Based Paint Hazards. If your contract is for acquisition or rehabilitation of residential structures, you must comply with HUD's Lead-Based Paint regulations. See Chapter 3 and 16 for additional information about Lead-Based Paint. *(This paragraph is not included in P/TA contracts.)*
11. NLRB Certification. When you sign your contract you are stating under penalty of perjury that you have had no more than one unappealable finding of contempt of court issued by a federal court in the preceding two years because of your failure to comply with a federal court order to comply with a National Labor Relations Board order.
12. Procurement. You are required to procure goods and services which will be paid for in whole or part with CDBG funds in a manner providing full and open competition. (See Chapter 8.)
13. Program Income. You agree to account for receipt and expenditure of any program income you have from this grant and any prior grants generating such income. (See Chapter 14 for detail on program income and Chapter 10 for reporting requirements.)

At grant close-out, if the Department finds you did not meet the national objectives or public benefit requirements, it may recapture program income and/or part or all of your grant and/or exclude your jurisdiction from further CDBG funding.

14. Relocation, Displacement and Acquisition. When your project activity involves acquisition of real property, you must comply with federal relocation law to accommodate those persons temporarily or permanently displaced by the project. You also must comply with federal relocation law when your project includes rehabilitating rental housing units and results in increased rents to TIG households. You may pay relocation expenses with your CDBG funds. (See Chapter 6.) *(This paragraph is not included in P/TA contracts.)*
15. Uniform Administrative Requirements. This paragraph refers the grantee to various administrative requirements in Federal Regulations.

### **Attachment C: Grant Activity.**

1. Description of Grant Activity/Grant Amount. This section describes the work you have agreed to do using the CDBG funds and shows dollar amounts for each activity, including general administration.
2. Operating Budget. Before you draw down any funds you must come to agreement with the Department on the specifics of your project budget. Normally this is covered by the budget or sources and uses form submitted in your application, but if there are any changes or clarifications, you will need to work it out with the Department in advance of drawing down the grant monies.
3. Leverage/Program Income. The committed leverage for which you received credit in your application are detailed here. You must report on the expenditure of these funds throughout the term of the grant, and receive and expend all of the commitments by the contract expiration date. If you planned to spend program income on this grant, a notation of the amount and intended purpose will appear here.

*If you have a P/TA grant, this paragraph will be headed Cash Match/Program Income. Specific conditions apply to the expenditure of cash match for planning grants, including the requirement that you have to spend your cash match before you spend any of the CDBG funds. During the term of the grant, if you decide not to continue with some or all of the grant activity, you will not be able to request a refund of your cash match contribution prorated to the amount of CDBG funds expended.*

4. Expenditure of Funds. The expenditure milestones for your grant activities (e.g., housing rehabilitation, economic development, planning) are identified here. Report on your progress on your FARs and GPRs. *(There are no expenditure milestones for P/TA grants.)*

You may not incur any general administration costs against the grant until your contract is effective unless you have received prior written approval from the Department. You are limited to spending no more than 7-1/2% of the grant amount for general administration. *For P/TA grants, the general administration expenditure limit is 5% of the grant amount.*

If you have a General/Native American or Economic Development grant award, you may not incur costs or expend any grant funds for program activities until you have fulfilled all the 90-day special conditions (see Attachment D), unless you have received prior written permission from the Department.

*If you have a P/TA grant, the Department will retain 10% of the grant until you have submitted, and the Department has approved, the final product for the grant. The final product should be submitted by the contract's expiration date.*

5. Periodic Reporting Requirements. You must report on your progress throughout the term of your contract using the reports specified. Other reports such as for labor standards compliance or lump-sum drawdowns may also be required depending on your type(s) of activities. Late or missing reports may hurt your performance rating on subsequent funding applications. (See Chapter 10 on reporting.)
6. Monitoring Requirements. The Department may conduct a program and/or fiscal monitoring of your grant. This usually involves a site visit to review all of your program records. The Department will notify you in writing of any findings made and you must resolve them by the date given and before your grant can be closed out. (See Chapter 12.)

*(P/TA grants are subject to these monitoring requirements, but generally are not monitored through a site visit.)*

7. Grant Closing Requirements. To close out your grant you must submit the documents listed within 90 days after your contract expiration date. The Department will review the documents and notify you if anything is missing or needs correction. (See Chapter 13 on grant close-outs.)  
*(This paragraph is #8 on P/TA grants.)*

8. Submittal of Final Product and Release of Final Payment. *(This paragraph is #7 on P/TA grants.) If you have a P/TA grant, Attachment C of your contract will have a separate paragraph relating to the submittal of final products and release of a final payment. All final products must contain an acknowledgment on the front cover that it was funded in whole (or in part) by CDBG. The Department will retain 10 percent of the grant amount until the final product has been submitted to and approved by the Department.*



*The paragraph will also contain a brief description of what the final product will include. The final product should be submitted for review no later than the ending date of the contract.*

*The grantee must, if applicable, submit documentation of any procurement carried out under the P/TA contract. This documentation is due to HCD for review and approval prior to the contract expiration date.*

9. Special Conditions. *(For P/TA contracts only, Special Conditions are included as part of Attachment C.) If CDBG P/TA funds are used to prepare a CDBG application, the grantee is limited to \$2,500 for a G/NA or Colonias application and \$7,500 for an ED Over The Counter or Enterprise Fund application*

#### **Attachment D: Special Conditions.**

Depending on your type of grant and grant activity(ies) you may have one or more special conditions listed under this section of your contract. Note that you may incur costs against the general administration portion of your grant to clear special conditions, but you may not incur program activity costs, or activity delivery costs except as noted below, until all special conditions are cleared. *There is no Attachment D for P/TA grants.* However, see #9 above under Attachment C for special conditions related to P/TA grants.

NOTE: If you amend an open grant to use Program Income, all work funded by Program Income is subject to the terms and conditions of the standard agreement and must be completed by the ending date of the standard agreement. Depending on the activity funded by Program Income, it will be subject to the special conditions described below for each activity.

1. 90-day Conditions - All Activities. All grantees must comply with the applicable federal environmental, relocation, program income planning, and applicable site control requirements within 90 days after contract execution. Submit the appropriate documents to the Department for review. When the Department approves your submittals, it will notify you in writing that these special conditions have been cleared.
2. Special Conditions - All Activities. Your contract may include none, one or multiple special conditions. The following listing covers the basic types of special conditions that you may find in your contract. Activity-specific conditions may also be included. Review your contract carefully, and contact your CDBG representative if you have any questions. Note that activity delivery dollars as well as general administration dollars may be used to meet these conditions, as appropriate.

Funding applications to other sources. If you stated in your application that you were applying to other funding sources to leverage the project, you need to inform the Department of the status of such application(s) and provide documentation of the funding commitments (e.g., copies of award letters, contracts). If sufficient other funding is not committed at the earliest opportunity, and in no case later than 12 months of the contract effective date, your CDBG grant may be terminated.

Easements and Rights-of-Way. If your project requires easements and rights-of-way (e.g., for a sewer line extension) you must obtain these within the number of months specified. Provide documentation to the Department of the approved easements and/or rights-of-way and submit it for review and approval. Failure to obtain them may cause your contract to be terminated.

3. 90-day Conditions: Unresolved Findings, Outstanding Final Products, or Missing Audits. If you have any of these problems, a condition will be in your contract identifying the missing items and the timeframe for submitting them or otherwise demonstrating your effort to correct the problems. Failure to meet these conditions may result in termination of your contract.
4. Special Conditions - By Activity. Depending on the activity(ies) covered by your project you may have one or more sections of special conditions by activity type. The following explains the common conditions for each activity type. In each case, after reviewing and approving the applicable documentation, the Department will send you written notice of when the condition is cleared.

#### Housing Rehabilitation.

- Program Guidelines. Submit your rehabilitation program guidelines to the Department for review and approval within 90 days of your contract effective date. If your rehabilitation program includes rental properties, you must also submit your provisions for assuring affordable rent for TIG households. Any subsequent changes to the program guidelines must also be submitted to the Department for review and approval prior to your implementing the change. (See Chapter 16 for information on content of the guidelines.)

#### New Construction.

- Infrastructure in support of multi-family, non-senior new construction. CDBG funds used for infrastructure in support of such new construction may only pay for that portion associated with the percent of benefit to the TIG beneficiaries. Not less than 20 percent of the units must be occupied by TIG households at affordable rents, and the proportion of the total cost of developing the project to be charged to CDBG may not exceed the proportion of units in the project that will be occupied by TIG households.

### Homebuyer Assistance.

- **Program Guidelines.** Submit your homebuyer assistance program guidelines to the Department for review and approval within 90 days of your contract effective date. If your homebuyer assistance program includes rehabilitation, then your guidelines should include the applicable CDBG rehabilitation program provisions (see Chapter 16, Housing Rehabilitation). Any subsequent changes to the program guidelines must also be submitted to the Department for review and approval prior to your implementing the changes. Please see Chapter 17 for information on contents of the guidelines.

### Community Facilities/Public Services

- Continuing Use/Rent Limitation Agreement/Program Income. If you use more than \$25,000 in CDBG funds to acquire or improve real property, whether using CDBG funds in whole or part and whether or not you or a third-party have control of the property, you must either:
  1. Prepare a lease or rent limitation agreement with the property users to ensure the property is used to meet the TIG benefit specified in your CDBG application for at least five years after your CDBG contract expiration; or
  2. If the intended use is not continued as required above, then obtain reimbursement to your CDBG program in an amount equal to the current market value of the property less any portion of the value attributable to non-CDBG expenditures for acquisition or improvement.

Public Works. If you have a public works project, several special conditions may apply.

1. A Project Timeline Schedule including all of the applicable key events must be submitted to the Department for review and approval within 90 days of contract execution.
2. If your project is for water and sewer laterals or other utility service connections on private property, you may only use your CDBG funds for the improvements associated with TIG households. That portion of the utility service connection running from the public right-of-way across private property to the house is the lateral. If such improvements are completed as part of a housing rehabilitation activity, document the costs and benefit as you do for your other housing rehabilitation activities.

3. If you are forming an assessment district to recover capital costs of a public works improvement you must submit within 90 days for Department review and approval an assessment district formation and implementation timeline to show expenditures and benefits accruing by the end of the contract term. Include, at minimum, the events listed.
4. This section clarifies how CDBG funds may and may not be used to pay one-time user fees for accessing a public improvement (such as hooking up to a new water or sewer line).
5. Rate structure. If your project is to build or improve a facility for the provision of water, sewer, waste, natural gas, or electricity, you must submit the required documentation to the Department within 90 days to show your plan for continuing maintenance and eventual replacement of the system.
6. You must provide evidence of site control, as applicable, before going out to bid on your project.
7. Payments to Targeted Income Group (TIG) Households. When payment of assessments is part of a CDBG project, CDBG funds can be used to pay assessments for only the TIG households. If there are insufficient funds to pay for all TIG households, then the grantee must pay for the lowest TIG households first (50% of county median income or below) and certify that it lacks sufficient funds to pay for all TIG households (between 50 and 80% of median).

Economic Development. For Enterprise Fund and Over-the-Counter grants:

1. You must comply with NEPA requirements for each business assistance activity funded prior to expending your grant activity funds. (See Chapter 3.)
2. If applicable to your CDBG activity, submit a relocation plan. (See Chapter 6.)
3. Before drawing down your grant and no later than 90 days from your contract effective date, submit to the Department the following items, as applicable:
  - a. If your project involves job creation and retention activities to benefit TIG persons, submit:

An Employment Plan including recruitment and hiring strategies and your responsibilities for project oversight, as described; and

The Employment Agreement(s) between you and the assisted business owner(s) covering all of the information listed here and in the federal regulations.

- b. For Microenterprise Assistance activities submit:

A Beneficiary Tracking Plan specifying how you will keep records of assisted persons for all of the variables listed to ensure compliance with program requirements. (See also Chapter 7 for recordkeeping suggestions.)

(See Chapter 15 for further information on Economic Development activity and samples of some of the required documents.)

### **III. COMMON PROBLEMS.**

- Not completing required conditions prior to incurring costs
- Not completing work within the timeframe agreed to in the contract
- Late, missing, or incomplete reports
- Missing or incomplete Final Products for P/TA grants

### **IV. DEPARTMENT'S ROLE.**

The Department will review the documents submitted to meet the various special conditions and will provide written notification to you when the conditions are cleared. The Department will review your progress reports and monitor your program and financial records for compliance with your contract. The Department is available to answer questions about the terms and conditions of your contract and how to adequately fulfill them.

### **V. REFERENCES.**

Your contract

### **VI. SUPPORTING MATERIALS.**

- Disclosure of Lobbying Activities